No. 04-563

IN THE

Supreme Court of the United States

DERRICK A. MAYLE, WARDEN,

Petitioner,

v.

JACOBY LEE FELIX,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* PROFESSORS ARTHUR R. MILLER, JOHN B. OAKLEY, KEVIN M. CLERMONT, SHERI J. ENGELKEN, TYLER T. OCHOA, LAUREN ROBEL, MICHAEL E. SOLIMINE, JEFFREY STEMPEL, AND GEORGENE M. VAIRO IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether, in a habeas corpus petition, an amended claim alleging violation of the petitioner's Fifth Amendment right against self-incrimination relates back to an original claim alleging violation of the petitioner's rights under the Confrontation Clause, such that the new claim is not barred by the AEDPA statute of limitations.

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INTERESTS OF *AMICI CURIAE*[1]

Amici Curiae are all professors who teach in the field of civil procedure. Their qualifications are set forth in the Appendix. As scholars and commentators in the field, *amici* have a unique perspective on the traditional construction of the Federal Rules of Civil Procedure, and an interest in maintaining consistent and uniform interpretation of those Rules.

Given that perspective, *amici* believe that the issue presented here is of fundamental importance to the proper interpretation of the Federal Rules, because Rule 15(c) is a key mechanism in ensuring the just adjudication of civil actions. It permits an original complaint or petition to be amended—within the important limitations established by Rule 15(a)—so long as the amended pleading relates to the same "conduct, transaction, or occurrence" as the original pleading. Fed. R. Civ. P. 15(c)(2). In short, it helps to ensure that related issues are adjudicated in a single proceeding, and that formalistic procedural barriers do not prevent the just adjudication of substantial claims. To interpret Rule 15(c) as foreclosing Mr. Felix's amended petition would do violence to Rule 15(c) and its purposes, not only in the context of habeas corpus, but across civil procedure. After all, the rules of habeas corpus specifically incorporate the Federal Rules where they do not conflict with other habeas statutes, and the rule that the Court adopts in this case will have repercussions for all civil litigation in the federal courts.

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[1] Pursuant to Rule 37.6 of the Rules of this Court, the parties have consented to the filing of this brief, and letters of consent have been lodged with the Clerk. Pursuant to Rule 37.6 of this Court, we state that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than *amici* or their counsel,. has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND BACKGROUND

In 1996, Congress implemented a one-year statute of limitations for habeas corpus petitions. See Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, § 101, 110 Stat. 1214, 1217, *codified at* 28 U.S.C.A. § 2244(d)(1)(A). The filing of the writ, however, remains subject to the relation-back doctrine of Rule 15(c)(2) of the Federal Rules of Civil Procedure. In this particular fashion (as well as many others) the Great Writ interacts and intersects with the Federal Rules of Civil Procedure—one of the triumphs of twentieth century law that has succeeded in no small part because of the offices of this Court. It is crucial that this interaction is implemented properly, in order to protect the purpose of the writ, the integrity and consistency of the Federal Rules, and the judgment of Congress.

In this case, the interpretation of the Federal Rule that most closely aligns with precedent and the purposes of the Rule also provides appropriate protection to the writ of habeas corpus. Rule 15(c)(2) permits relation back when a single injury is alleged in the original petition, and the petitioner amends the petition to identify additional causes of that same injury. Because the Federal Rules provide ample protection for statutes of limitations, this interpretation also remains faithful to congressional intent. This interpretation is also efficient. It permits courts the time and opportunity to appoint counsel in worthy cases and to have those counsel prepare appropriate amendments to prose filed petitions.

Most importantly, a contrary interpretation in habeas cases would diverge from precedent. Creating two interpretations of the same rule depending on the cause of action would place at risk not only the relation-back doctrine in all civil actions, but the uniform interpretation of the Rules in general. The Federal Rules created a unified system of procedure out of the morass of divergent systems that preceded them. The Warden now asks the Court to risk returning to that system by

affording the Rules a different interpretation depending on the cause of action at issue in a particular case. The Court should forcefully reject this unwarranted and unwise suggestion.

SUMMARY OF ARGUMENT

Mr. Felix came to federal court with a single allegation: that California has unlawfully detained him based on a trial that violated his constitutional rights. His petition is based upon one indivisible injury (unlawful detention), and one individual event underlying that injury—namely, a conviction based on unconstitutional evidence.

The Warden, however, seeks to parse Mr. Felix's injury into two separate claims, and on that basis asserts that Felix's amended claim is time-barred. This argument runs directly contrary to Federal Rule of Civil Procedure 15, its long-standing interpretation, and its salutary purposes. Rule 15 permits a plaintiff to amend a complaint or petition. Under the rules governing habeas corpus proceedings, the same procedure applies in habeas cases. See Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts. Under certain circumstances, Rule 15 creates a special rule governing the timeliness of amended pleadings. If the amended petition arises out of the same "conduct, transaction, or occurrence set forth" in the original pleading, then it is deemed to "relate[] back" to the original pleading, and therefore is timely even if the statute of limitations has run. Fed. R. Civ. P. 15(c)(2). Here, Felix's amended complaint, just like his original complaint, relates to his unconstitutional trial (and subsequent detention), which constitutes "conduct," a "transaction," *and* an "occurrence" within the meaning of Rule 15(c)(2). In short, the plain text of Rule 15(c)(2) compels the conclusion that Felix's amended complaint relates back to the original. It is, therefore, timely.

This reading of Rule 15(c)(2) is confirmed and compelled by *Tiller* v. *Atlantic Coast Line Railroad*, 323 U.S. 574

(1945), which holds that relation back is permitted when the original complaint alleges an injury and the amended filing simply alleges additional causes of that same injury. *Id.* at 580-81. That is precisely what occurred here. Felix's original petition alleged one cause of his unconstitutional detention (namely, violation of his Sixth Amendment right to confront witnesses); his amended petition simply alleges that the same injury is also attributable to a second cause (i.e., violation of his Fifth Amendment right against self-incrimination). Under such circumstances, *Tiller* plainly requires relation back.

Any other result would cause one of two intolerable consequences. On the one hand, interpreting Rule 15(c) in the fashion advocated by the Warden would require an atextual reading of the Rule that would conflict with the Rule's longstanding interpretation. Such an approach is obviously unjustified, which the Warden tacitly admits when she advocates interpreting Rule 15 differently in the context of habeas petitions. This result, too, is intolerable, as there is absolutely no justification for crafting a habeas exception to Rule 15. The Rules must be consistent, regardless of the cause of action at issue in a given case, or there exists a grave danger of conflicting rulings and unfairness to all litigants, not just habeas petitioners.

The current interpretation of Rule 15(c)(2) has survived for over six decades. It has been interpreted consistently in all civil cases, despite claims that unique circumstances merit particular expediency for certain causes of action. The courts have doggedly resisted suggestions that the Rule cannot apply uniformly. Judges have wisely ignored doomsday predictions concerning the terrible consequences of relation back in given cases. This case presents merely one more such prediction that should be answered in the same way courts have answered others of its kind: Rule 15(c)(2) is one rule, with one meaning. The risk of inconsistent interpretation of the

Federal Rules dwarfs any risk posed by relation back in habeas petitions.

Indeed, there is no reason to distort Rule 15(c) to accomplish the end the Warden seeks, because courts already have ample means to resolve the practical concerns she raises (such as lengthy delays caused by frequent amendments). In order to amend a petition after an answer or other responsive pleading has been filed, a claimant must first obtain leave of court or the consent of the adverse party. And under Rule 15(a), the district court may withhold leave to amend in a number of circumstances, including when the proposed amendment would be frivolous or would prejudice the opposing party by imposing drastic alteration of the issues for trial. Simply put, there is no reason to distort Rule 15(c)'s plain text, its longstanding interpretation and its valuable purpose—and there is every reason not to take this radical step. The judgment below should be affirmed.

ARGUMENT

I. FELIX'S UNLAWFUL CONVICTION IS THE RELEVANT EVENT FOR PURPOSES OF "RELATION BACK."

For purposes of Rule 15(c)(2), the "conduct, transaction, or occurrence" at issue in Felix's habeas corpus petition is his allegedly unlawful conviction. A plain reading of the Rule necessitates this conclusion, as the trial at issue easily satisfies *all three* of Rule 15(c)(2)'s disjunctive criteria. Case law interpreting Rule 15(c)(2) confirms this plain reading. The injury alleged by a complainant is itself the relevant "conduct, transaction, or occurrence," regardless of whether the injury has multiple causes. Here, the injury is Mr. Felix's unlawful detention as a result of an unconstitutional trial. Felix's original and amended petitions both concern this single injury. Accordingly, the amended petition relates back to the original petition, and it is timely.

A. A Trial Is "Conduct," A "Transaction," And An "Occurrence."

Rule 15 is an integral part of the shift to liberalized pleading standards that characterized the adoption of the Federal Rules. See 6 Wright, Miller & Kane, *Federal Practice and Procedure* § 1471, at 505-07 (2d ed. 1990) ("[T]he Rule's purpose is to provide maximum opportunity for each claim to be decided on its merits rather than on procedural technicalities. . . . No longer is a party to be irrevocably bound to the legal or factual theory of his first pleading."). To that end, it has long been recognized that Rule 15(c)(2) liberalized the relation back doctrine, consistent with the general goal of the Federal Rules that disputes should be settled on their merits. *Id.* at 505 (the "effect of [Rule 15] is an amendment policy that is more liberal than that permitted at common law or under the codes"); *e.g.*, *Bowles* v. *Pure Oil Co.*, 5 F.R.D. 300, 303 (E.D. Pa. 1946) (although "[t]he doctrine of relation back of amendments existed long before the adoption of the Rules of Civil Procedure, . . . Rule 15(c) broadened its application").

This broad purpose is reflected in the sweeping, all-inclusive language of Rule 15(c)(2). There are any number of terms that the drafters of Rule 15 could have used to describe when a pleading relates back, but they chose three extremely broad ones: "conduct," "transaction," and "occurrence." Each of those terms plainly and easily encompasses the claim that the relevant event, for present purposes, is the trial that led to Mr. Felix's conviction.

The term "conduct" is broadly defined to include "[p]ersonal behavior, whether by action or inaction; the manner in which a person behaves." *Black's Law Dictionary* 315 (8th ed. 2004). Non-legal dictionaries confirm this broad understanding—the term is defined to encompass "the way one acts; behavior; deportment." *Webster's New World Dictionary* 296 (2d coll. ed. 1984). That Felix's trial falls within the expansive reaches of the term conduct hardly

requires discussion. In habeas matters, the broad "conduct" of the trial judge in ruling upon motions or objections and in "conducting" the trial gives rise to the unconstitutional trial that forms the basis of the petition. Mr. Felix contends that the trial judge "conducted" the trial in an unconstitutional fashion, when the court erroneously and improperly admitted evidence in violation of the Confrontation Clause and the Fifth Amendment right against self-incrimination.

Even more obviously, the challenged trial constitutes a "transaction." That term has multiple definitions, more than one of which applies here. For instance, it means "[s]omething performed or carried out." *Black's Law Dictionary* at 1535. In terms that are yet more capacious, a transaction encompasses "[a]ny activity involving two or more persons." *Id.* The trial and resulting detention unquestionably were "carried out" (prison sentences, as another example, are often said to be "carried out") and there can be no question that the trial and resulting detention are "activities involving two or more persons."

In an apparent effort to seek out a limited and favorable definition of the term "transaction," *Amici* States Attorneys General cite an outdated version of *Black's Law Dictionary*, and claim that a "transaction" is only an "'[a]ct of transacting or conducting any business.'" *Amici* States AG Br. at 10 (quoting *Black's Law Dictionary* 1496 (6th ed. 1990)). To be sure, in certain contexts the term transaction has a financial component. But that is by no means the only definition of the term, as *Black's* confirms. Indeed, the fragmentary definition provided by *Amici* has been amended to include "business *or other dealings*." *Black's Law Dictionary* 1535 (8th ed. 2004) (emphasis added). More importantly, this is by no means the only definition of the term, as both the sixth and eighth editions of *Black's* recognize. In fact, the sixth edition defines the term in a fashion that is even broader than the current edition, and therefore even more favorable to Felix here: "that which is done; an affair. An act, agreement, or

several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur. . . ." That definition unquestionably encompasses the unconstitutional trial and detention that Felix alleged to have occurred.

The final term in Rule 15(c)(2)'s definitional triad is "occurrence." This is the broadest of the three terms, as evidenced by its definition: "[s]omething that happens or takes place." *Black's Law Dictionary* at 1109. This legal definition is mirrored precisely by non-specialized definitions that recognize the breadth of the term. Another authority notes, for instance, that "occurrence is the general word for anything that happens or takes place." *Webster's New World Dictionary* at 984 (emphasis omitted). Under this common sense definition, no reasonable argument can be made that a trial is not an "occurrence."

It is no answer to contend, as do the States Attorneys General, that the term "occurrence" must be given a narrow interpretation to avoid rendering the other words in the phrase superfluous. *Amici* States AG Br. at 10-11. That interpretive rule, valid in other contexts, simply cannot govern here, for there is no way to define "occurrence" that is consistent with the term's plain meaning and does not encompass the terms "conduct" and "transaction." Tellingly, the States Attorneys General offer no such definition to this Court. From the face of the Rule, it is plain that the terms "conduct," "transaction" and "occurrence" were meant to be overlapping and broadly encompassing. To suggest without explanation that "occurrence" must be given a forced construction to suit the desired result is the crudest form of question-begging, and does great violence to the plain language and purpose of the Rule.

B. The Relevant Event For Purposes Of Rule 15(c)(2) Is The Injury Suffered By The Petitioner, Not The Various Causes Of That Injury.

1. This plain-language interpretation of Rule 15 is confirmed by the longstanding interpretation of that rule's purpose, as recognized by this Court, as well as by lower courts and by commentators.

> When "interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the legislature . . . ."

Kokoszka v. *Belford*, 417 U.S. 642, 650 (1974) (second omission in original). As noted above, the purpose of the Federal Rules is to do substantial justice, and to promote resolution of disputes on their merits whenever possible. See *supra* at I.A. The drafters sought to ensure that cases be decided on their merits rather than on pleading technicalities. In service of this goal, Rule 15(c)(2) permits a claimant who has filed a timely complaint to add claims that would otherwise be time-barred so long as his original claim put the opposing party on notice of the injury that is alleged. The Rules permit such relation back because under such circumstances the purposes of the statute of limitations—i.e., preservation of evidence, *Barthel* v. *Stamm*, 145 F.2d 487, 491 (5th Cir. 1944), preventing stale claims and providing repose, *Sun Oil Co.* v. *Wortman*, 486 U.S. 717, 736 (1988) (Brennan, J., concurring in part, and concurring in the judgment)—have been satisfied by the original filing. The original filing puts the opposing party on notice that it should preserve evidence relating to the injury, and thus the opposing party "has been afforded all the notice the statutes of limitations are designed to afford." *Boddy* v. *Dean*, 821 F.2d 346, 352 (6th Cir. 1987) (Joiner, J., concurring in part, and

dissenting in part), *abrogated on other grounds by Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990).

Consistent with this guiding principle, courts have uniformly recognized that Rule 15 is to be broadly construed, so as to remain faithful to the original intent of the Rule. Contrary to the argument advanced by the Warden and her *amici*, Rule 15(c) has in no way been given a narrow interpretation. *Amici* States AG Br. at 15 (referring to Rule 15(c)(2)'s "generally-recognized narrow scope"). A liberal interpretation of Rule 15(c) echoes loudly and frequently through the cases and commentary. See, *e.g.*, 3 *Moore's Federal Practice* § 15.02[1], at 15-10 (3d ed. 2004) ("Rule 15 further enhances the policy of allowing liberal amendments by allowing the relation back of amendments under certain circumstances . . . ."); 6A Wright, Miller & Kane, *Federal Practice and Procedure* § 1497, at 93 (2d ed. 1990) (referring to the "liberal policy of Rule 15(c)"); Note, *Developments in the Law: Statutes of Limitations*, 63 Harv. L. Rev. 1177, 1265 (1950) (referring to the "liberal standards for amendment of a pleading[] after expiration of the statutory period" of Rule 15(c)).[2]

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[2] This commentary is supported by the case law. Courts uniformly have recognized that the rule is meant to be construed broadly in light of the Federal Rules' purposes. *See, e.g.*, *Bensel* v. *Allied Pilots Ass'n*, 387 F.2d 298, 310 (3d Cir. 2004) (interpretation of Rule 15(c) should be "[i]n accordance with the general theory of liberalized pleading in the federal system"), *petition for cert. filed*, No. 04-1145 (U.S. Feb. 22, 2005); *Miller* v. *American Heavy Lift Shipping*, 231 F.3d 242, 249 n.6 (6th Cir. 2000) (referring to the "liberal approach of Rule 15(c)"); *Alpern* v. *UtiliCorp United, Inc.*, 84 F.3d 1525, 1543 (8th Cir. 1996) (Rule 15(c) "has been liberally construed"); *Myelle* v. *American Cyanamid Co.*, 57 F.3d 411, 416 (4th Cir. 1995) (calling interpretation of Rule 15(c) "flexible" and "liberal"); *Violette* v. *Smith & Nephew Dyonics, Inc.*, 62 F.3d 8, 12 n.2 (1st Cir. 1995) (referring to the "liberal standard for amendments to pleadings of Fed. R. Civ. P. 15(c)"); *Fluker* v. *Kenney's Franchise Corp.*, 908 F.2d 966 (4th Cir. 1990) (per curiam) (table), *available at* 1990 WL 101418, at **2 ("liberality should guide our analysis under Rule 15(c)"); *Siegel* v. *Converters Transp., Inc.*, 714 F.2d 213, 216 (2d. Cir. 1983) (per curiam) ("We held over forty years ago that Rule 15(c) was to be liberally construed . . . ."); *Staren* v. *American Nat'l Bank & Trust Co. of Chi.*, 529 F.2d 1257, 1263 (7th Cir. 1976) ("amendments pursuant to Rule 15(c) should be freely allowed"); *Snoqualmie Tribe of Indians ex rel. Skykomish Tribe of Indians* v. *United States*, 372 F.2d 951, 960 n.5 (Ct. Cl. 1967) ("Federal courts have applied Rule 15(c) very liberally."); *Rural Fire Prot. Co.* v. *Hepp*, 366 F.2d 355, 362 (9th Cir. 1966) (Rule 15(c) is "liberally applied"); *Beegan* v. *Brady-Hamilton Stevedore Co.*, 346 F.2d 857, 860 (9th Cir. 1965) (referring to the "liberality . . . which is enjoined upon the courts by Rule 15(c)"); Fraser, *Selected Procedural Issues in Section 1983 Litigation, in Section 1983 Civil Rights Litigation and Attorneys' Fees 1989: Current Developments* 115, 125 (1989) (Rule 15(c) "has been construed very liberally"); Fischer, *The Limits of Statutes of Limitations*, 16 S.W. U. L. Rev. 1, 22 (1986) ("federal courts liberally allow relation back for new claims asserted against existing defendants") (footnote omitted).

2. Rule 15's broad purpose is confirmed, and its application in this context made quite clear, by *Tiller* v. *Atlantic Coast Line Railroad*, 323 U.S. 574 (1945). In that case, the Court recognized that when multiple acts by the same party cause a single injury, the claimant must plead only the injury to place the offending party on notice that all events leading to the injury will be at issue. Once the offending party has such notice, the purposes of the statute of limitations are satisfied. The possibility of repose has been eliminated, and the opposing party has been notified that it should preserve all evidence relating to the injury alleged, thus avoiding the potential for stale claims. *Sun Oil Co.*, 486 U.S. at 736.

Tiller concerned a railroad employee who was killed by a backward-moving train. The family of the deceased brought suit against the railroad under the Federal Employer's Liability Act, 45 U.S.C. § 51 *et seq.*, in which they alleged common-law negligence on the part of the railroad. The specific acts of negligence included failure to provide a lookout, failure to give the deceased proper warning of the approach of a train, and failure to provide adequate lighting on the lead car of the backward-moving train. The family

later sought to amend its complaint to add the additional claim that the railroad had violated the Boiler Inspection Act, 45 U.S.C. § 22 *et seq.*, which required that all locomotives have one light on the front and one light on the rear, despite the fact that the statute of limitations had run.

Critical here is the factually distinct nature of the original and amended claims. The original claim alleged a negligent failure to properly light the *front* car in the train's backward motion. *Tiller* v. *Atlantic Coast Line R.R.* 318 U.S. 54, 56 (1943); *Tiller*, 323 U.S. at 578, 581. The amended claim alleged failure to provide a light on the rear of the locomotive, i.e., the *rear* car on the backward-moving train. 323 U.S. at 577. The amendment involved completely different evidence, and a different duty on the part of the railroad.

Even so, the Court held that the amendment related back to the original claim. It concluded that the relevant event for purposes of Rule 15(c)(2) was not the individual acts of negligence that made the death possible, but rather the more general "conduct, transaction, or occurrence which involved the death of the deceased." *Id.* at 581. The Court was careful to point out that the purposes of a statute of limitations are satisfied by the filing of a petition relating to a single injury, regardless of whether the various factual predicates to the injury are all included in the petition.[3]

The interpretation and application of *Tiller* in the federal courts of appeals confirms that, under Rule 15, Felix's amended petition relates back. "'[A]n amendment that

[3] *See Tiller*, 323 U.S. at 581:

> The cause of action now, as it was in the beginning, is the same—it is a suit to recover damages for the alleged wrongful death of the deceased. . . . There is no reason to apply a statute of limitations when, as here, the respondent has had notice from the beginning that petitioner was trying to enforce a claim against it because of the events leading up to the death of the deceased in the respondent's yard.

alleges added events leading up to the same injury may relate back.'" *Miller* v. *American Heavy Lift Shipping*, 231 F.3d 242, 248 (6th Cir. 2000) (quoting *Koon* v. *Lakeshore Contractors*, 128 F.R.D 650, 653 (W.D. Mich. 1988)). The reason for this is plain: "When a suit is filed in a federal court under the Rules, the defendant knows that the whole transaction described in it will be fully sifted, by amendment if need be. . . ." *Barthel*, 145 F.2d at 491. And, important here, an amended pleading relates back even when the alleged causes of a single injury occur at different times. *FDIC* v. *Conner*, 20 F.3d 1376, 1386 (5th Cir. 1994) (in a mismanagement case, the court permitted loans not included in the original complaint to relate back because they caused the same injury); *Boddy*, 821 F.2d at 351 (separate instances of sexual harassment related back, as they were part of the same course of conduct); *Rural Fire Prot. Co.* v. *Hepp*, 366 F.2d 355 (9th Cir. 1966) (additional periods of unpaid wages related back to periods pleaded in the original claim). Commentators confirm the lower courts' interpretation of *Tiller*. Wright & Kane, *The Law of Federal Courts* § 66, at 462 (6th ed. 2002) (the *Tiller* court permitted relation back even though the amendment "was based on a different legal theory than was the original [claim], and it rested on facts not asserted originally").

Tiller flatly forecloses the argument that the appropriate inquiry is not the injury itself, but rather the factual predicate to the injury. But cf. *Amici* States AG Br. at 2 (advancing this argument). This theory, were it correct, would have required the opposite result in *Tiller*. The injury in that case was the employee's death, and it was alleged to result from multiple, independent, and factually distinct predicate causes, some of which were not identified in the original complaint. The original complaint, for instance, did not mention the failure to light the back end of the locomotive; this was added only in the amended complaint. Nonetheless, the Court permitted relation back precisely because it recognized that the proper

focus for purposes of Rule 15 is the injury, not the factual predicates to it.

Like the claimant in *Tiller*, Felix has consistently alleged a single injury: wrongful detention based on an unlawful conviction. As in *Tiller*, there are several acts that led to that single injury. By alleging one of the failures that led to his injury, Mr. Felix put the state on notice that he would be challenging his trial and conviction. Just as in *Tiller*, any basis for challenging that conviction relates back to the original claim. The state has been afforded all the protection that a statute of limitations is designed to afford. As the Seventh Circuit properly recognized: "A prisoner who comes up with ten different ways to contest his sentence still is litigating about a single transaction or occurrence (the supposedly unlawful sentence), so an amendment necessarily relates back under Rule 15(c)(2)." *Ellzey* v. *United States*, 324 F.3d 521, 526 (7th Cir. 2003).

3. That Felix's amended filing relates back to his original petition is confirmed by the fact that the constitutional errors at issue in Felix's petitions both are *trial* errors. Accordingly, there can be no question that his trial is the relevant event for purposes of Rule 15. Mr. Felix has alleged two constitutional violations: that his rights under the Sixth Amendment's Confrontation Clause were violated when videotaped testimony was admitted against him; and that his Fifth Amendment right to due process and against self-incrimination were violated by the admission of evidence concerning statements that Felix made as the result of coercion and intimidation. Because constitutional errors occurred only once the evidence was wrongfully introduced at trial, Felix's injury for purposes of *Tiller* analysis must be his trial—which, for all of the reasons set forth above and in Felix's own brief, is undoubtedly "conduct, [a] transaction, or [an] occurrence."

Felix's first claim, that his Confrontation Clause rights were violated, self-evidently concerns a trial right. See U.S.

Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ."). It is the admission *at trial* of unconfronted testimony that violates the Constitution. See generally *Crawford* v. *Washington*, 541 U.S. 36 (2004); see also *Kentucky* v. *Stincer*, 482 U.S. 730, 737 (1987) ("The right to cross-examination, protected by the Confrontation Clause, thus is essentially a 'functional' right designed to promote reliability in the truth-finding functions of a criminal trial.").

Likewise, the right against self-incrimination is a trial right, as this Court recently has held. "Statements compelled by police interrogations of course may not be used against a defendant at trial, but it is not until their use in a criminal case that a violation of the Self-Incrimination Clause occurs . . . ." *Chavez* v. *Martinez*, 538 U.S. 760, 767 (2003) (plurality opinion) (citations omitted); see also *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) ("The privilege against self-incrimination guaranteed by the Fifth Amendment is a fundamental trial right of criminal defendants. Although conduct by law enforcement officials prior to trial may ultimately impair that right, a constitutional violation occurs only at trial.") (citation omitted).[4]

This close nexus between the errors alleged in the original and amended petitions confirms that they arise out of a single instance of "conduct, transaction, or occurrence."

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[4] To be sure, the Court has left open the possibility that the Fifth Amendment right against self-incrimination may extend beyond a formal trial. *See Chavez*, 538 U.S. at 766-67 (leaving unresolved the question when a "criminal case" commences for purposes of the Fifth Amendment). But it remains clear that it is the fact of admitting coerced testimony, and thereby compelling a defendant to "be a witness against himself" that causes the constitutional violation. *Id.*

C. There Is No Basis In The Federal Rules To Interpret Rule 15 Differently For Purposes Of Habeas Petitions.

Rule 15 applies to habeas cases. 28 U.S.C. § 2242; *Anthony v. Cambra*, 236 F.3d 568, 576 (9th Cir. 2000). Despite protestations to the contrary, petitioner asks this Court to interpret Rule 15(c) differently in the habeas context than it does in the civil context. This is unfaithful to the spirit of the Rules and the explicit goals of the drafters.

In an address to the American Law Institute, Chief Justice Hughes described the purpose of the Federal Rules: "It is manifest that the goal we seek is a simplified practice which will strip procedure of unnecessary forms, technicalities and distinctions, and permit the advance of causes to the decision of their merits with a minimum of procedural encumbrances." Hughes, C.J., Address before the American Law Institute (May 9, 1935), *reprinted in* 21 *A.B.A.J.* 340, 341 (1935); see also Goodman, *On the Fiftieth Anniversary of the Federal Rules of Civil Procedure: What did the Drafters Intend?*, 21 Suffolk U. L. Rev. 351, 356-57 (1987) ("[t]he dominant intellectual and operational force" on the Advisory Committee for the Federal Rules "believed that procedure should be entirely separate from substance").

If the Court adopted appellant's logic, there would be two interpretations of Rule 15(c)(2). In civil trials, the rule would remain that all causes of the same injury relate back. In the habeas context, two causes of the same injury would not be recognized as facets of the same "conduct, transaction, or occurrence." There would in essence be two separate legal standards under the same language.

Creating such a precedent places at risk not only Rule 15(c)(2), but the very theory upon which the Federal Rules are based. Uniform interpretation creates efficiency. It relieves claimants of the burden of assiduously obeying multiple arcane procedural requirements. If Rule 15(c)(2)

creates different standards depending on the cause of action, there is nothing to stop courts from creating specialized interpretations of other procedural rules. This result offends the founding rationale of the Federal Rules.

Putting to one side the obvious difficulty inherent in interpreting the plain language of Rule 15 in two contradictory ways, see *Clark* v. *Martinez*, 125 S. Ct. 716, 722-23 (2005) (to give two different meanings to the same statutory language "would be to invent a statute rather than interpret one"), such a result could not reasonably be cabined to the habeas context. There are other, comparably unique areas of law in which the values of speedy resolution, finality and repose are of similar, if not greater value. These include challenges to administrative actions, civil rights proceedings and many forms of class action involving prisoners and others with claims against States or other holders of the public fisk. *E.g.*, *Clark* v. *California*, No. C96-1486-FMS, 1998 WL 242688 (N.D. Cal. May 11, 1998) (Rule 15(c)(2) applied in prisoners' class action). In these contexts, as in all civil actions, Rule 15 amendments are commonplace. To adopt a special reading of Rule 15(c) in the habeas context is to open the door to new variations on Rule 15(c) in other areas of the law, and such a context-specific reading of the rule can only lead to further disuniformity from jurisdiction to jurisdiction. The result will be unfairness to litigants, and confusion and complexity that parallel the regime that preceded the adoption of the Rules.[5]

It is unsurprising, then, that the Advisory Committee, this Court, and Congress did not intend for divergent interpretations of Rule 15(c)(2) in the habeas context. Rule

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[5] The foreseeable consequence of permitting different interpretations of Rule 15 is that uncertain litigants will be compelled to "throw in the kitchen sink" in their initial pleading or in an amendment immediately before the expiration of the statute of limitations. Creating such an impetus does little for the cause of efficiency, especially for those, like the *amici* States, who must respond to such pleadings.

11 of the Rules Governing Section 2254 Cases in the United States District Courts states: "The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules."

To be sure, this is not a bright-line rule that every one of the Federal Rules of Civil Procedure invariably applies unless it directly conflicts with the habeas rules. Congress recognized that, in some cases, the Court must exercise its discretionary authority to diverge from the Rules. See Advisory Committee Notes to Rule 11 (citing with approval *Harris* v. *Nelson*, 394 U.S. 286 (1969)). This does not mean, however, that courts have a free hand to reinterpret for habeas purposes a rule that is clearly applicable to habeas. Rather, it means only that certain rules simply do not apply to habeas. *E.g.*, *Harris*, 394 U.S. at 297 (concluding that Rule 33 does not apply to habeas petitions). As Judge Easterbrook recognized, Congress would not have adopted the Federal Rules in the habeas context had it intended for unique applications and interpretations. *Ellzey*, 324 F.3d at 526 (decisions that do not permit relation back of additional claims in the habeas context "do not explain why Rule 15(c)(2) has one meaning for most civil litigation, and a different meaning for a collateral attack").[6] And not even the Warden asks this Court to hold Rule 15(c) altogether inapplicable in habeas; she implicitly and correctly concedes that Rule 15(c) must and does apply. Given that recognition, Rule 15(c) must apply in habeas as it does in civil litigation generally.

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[6] Nor is there any indication that Congress intended Rule 15(c) to apply differently in the context of habeas. Congress was surely well aware of both Rule 15(c)(2) and *Tiller* when it determined that the Federal Rules should apply in the habeas context. There is nothing in Congress' enactment of the AEDPA statute of limitations to signal that the Federal Rules of Civil Procedure should operate in some different fashion when habeas is at issue.

II. RULE 15(a) ENSURES THAT RELATION BACK WILL NOT UNDERMINE THE AEDPA STATUTE OF LIMITATIONS.

To permit relation back under the circumstances presented here is not only appropriate under the consistent interpretation of Rule 15, it would in no way undermine the purposes of AEDPA's statute of limitations.

Rule 15 contains safeguards that protect the integrity of statutes of limitations, so that litigants cannot abuse the relation-back doctrine. In particular, once a responsive pleading has been served, Rule 15(a) provides that a complaint (or, as here, a petition) may not be amended without leave of court or written consent of the adverse party. And, pursuant to Rule 15(a), there are significant restraints on a party's ability to amend pleadings. To be sure, Rule 15(a) is interpreted liberally, like the other provisions of Rule 15, but courts have significant discretion to deny leave to amend. This discretion is certainly ample to foreclose abusive and repetitive pleadings and, unlike the result that the Warden urges here, the use of a court's existing power under Rule 15(a) does no violence to the longstanding and proper interpretation of Rule 15(c).

The Court confronted the question of leave to amend in *Foman* v. *Davis*, 371 U.S. 178 (1962). In so doing, it noted numerous bases upon which leave to file an amended pleading may be denied, including, "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Id.* at 182. If the district court finds that a party has engaged in any of these behaviors, it is free to deny leave to amend, and the issue of relation back does not even arise. Accordingly, the discretion to deny leave enables courts to protect the integrity of all statutes of limitations. There is no indication that these tools cannot be employed to the same end to protect the AEDPA

statute of limitations. See *Slack* v. *McDaniel*, 529 U.S. 473, 489 (2000) (the Rules "vest the federal courts with due flexibility to prevent vexatious litigation" in the habeas context); *Ellzey*, 324 F.3d at 526 (concern for the purposes of the AEDPA statute of limitations "should influence the exercise of discretion under Rule 15(a)" rather than interpretation of Rule 15(c)); *Snoqualmie Tribe of Indians ex rel. Skykomish Tribe of Indians* v. *United States*, 372 F.2d 951, 960 (Ct. Cl. 1967).

In practice, district courts have not hesitated to deny leave to amend when necessary and appropriate. Most commonly, leave to amend has been denied where prejudice to the opposing party would result.[7] 6 Wright, Miller & Kane, *supra* § 1487, at 613. For example, courts have denied leave based on prejudice when a party seeks to make significant changes in legal theory so close to trial that the opposing party would be forced to alter its legal strategy. See, *e.g.*, *Cornell & Co.* v. *Occupational Safety & Health Review Comm'n*, 573 F.2d 820 (3d Cir. 1978); *Troxel Mfg. Co.* v. *Schwinn Bicycle Co.*, 489 F.2d 968 (6th Cir. 1973); *Kennedy* v. *Josephthal & Co.*, 635 F. Supp. 399 (D. Mass. 1985), *aff'd*, 814 F.2d 798 (1st. Cir. 1987); *Chromalloy Am. Corp.* v. *Alloy Surfaces Co.*, 351 F. Supp. 449 (D. Del. 1972). Accordingly, there is no cause for concern that habeas petitioners will engage in last minute amendments, much less

[7] In certain cases, courts have even denied leave to amend based on prejudice to non-parties. For example, in a dispute to determine insurance liability, the district court denied an insurance company leave to amend because granting leave would have unfairly delayed insurance payments to an injured family that was not a party to the suit. *Cooper* v. *American Employer's Ins. Co.*, 296 F.2d 303 (6th Cir. 1961); *see also Skehan* v. *Board of Trs*, 590 F.2d 470 (3d Cir. 1978), *overruled on other grounds as stated in Smith* v. *City of Pittsburgh*, 764 F.2d 188 (3d Cir. 1985); *Feldman* v. *Lifton*, 64 F.R.D. 539 (S.D.N.Y. 1974); 6 Wright, Miller & Kane, *supra* § 1487, at 634-35. Under the logic of *Cooper*, a district court could deny leave to amend based on the unjust burdens it would impose on victims.

amendments during or after trial. District court judges have the tools and the will to deny motions to amend under such circumstances.

Furthermore, courts repeatedly deny leave to amend when the amendment would add futile or frivolous claims. See, *e.g.*, *Demars* v. *General Dynamics Corp.*, 779 F.2d 95, 99 (1st Cir. 1985) ("a court has the discretion to deny [leave to amend] if it believes that, as a matter of law, amendment would be futile"); *Klamath-Lake Pharm. Ass'n* v. *Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (denial of leave to amend was proper where the district court believed amendment "could not affect the outcome of this lawsuit"). The Federal Rules, without unique interpretations for habeas petitions, are equipped to protect the AEDPA statute of limitations—just like all other statutes of limitations—from frivolous amendments.

Indeed, leave to amend has been denied for numerous other reasons. It has been denied because of pleading failures on the part of a claimant. It has been denied when a court has offered a claimant multiple opportunities to amend and the claimant fails to effectively state a claim. See, *e.g.*, *Smith* v. *Ayres*, 845 F.2d 1360 (5th Cir. 1988). Similarly, bad faith and futility, even without prejudice to the opposing party, are sufficient reason to deny leave to amend. *Wood* v. *Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1520 (9th Cir. 1983) (denying leave to amend because "repetitious motions to amend are a favorite tactic of" the movant). Likewise, unexplained delay has also served as a basis for denying of leave to amend. *Johnson* v. *Educational Testing Serv.*, 754 F.2d 20, 27 (1st Cir. 1985); *Chitimacha Tribe* v. *Harry L. Laws Co.*, 690 F.2d 1157, 1163 (5th Cir. 1982) ("When there has been an apparent lack of diligence, the burden shifts to the movant to prove that the delay was due to excusable neglect."). There should be no concern that habeas petitioners will engage in dilatory or manipulative tactics to defeat the AEDPA statute of limitations.

In short, Rule 15(a) provides courts with ample resources to protect the integrity of a statute of limitations in a civil suit, and there is no reason to believe that courts will be unable to employ those same resources in the habeas context. Having offered no reason why leave to amend should have been denied here under Rule 15(a), the Warden argues for a unique and inaccurate interpretation of Rule 15(c). This Court should reject that request.

CONCLUSION

For the foregoing reasons, and those set forth in Respondent's brief, the Court should affirm.

Respectfully submitted,

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APPENDIX

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